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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**  
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11 AZUJHON KENNETH SIMS, )

12 Petitioner, )

3:11-cv-00512-ECR-RAM

13 vs. )

**ORDER**

14 JACK PALMER, *et al.*, )

15 Respondents. )  
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18 On July 26, 2011, this court issued an order denying the two *pro se* petitions for writ of  
19 habeas corpus for failure to state a claim for which relief may be granted (ECF #3) and entered judgment  
20 (ECF #6). On January 20, 2012, petitioner filed a motion for district judge to reconsider order (ECF #9).

21 Where a ruling has resulted in final judgment or order, a motion for reconsideration may  
22 be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure  
23 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J*  
24 *Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9<sup>th</sup> Cir. 1993), *cert. denied* 512 U.S. 1236 (1994).  
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1 Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order  
2 for the following reasons:


3 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly  
4 discovered evidence which by due diligence could not have been  
5 discovered in time to move for a new trial under Rule 59(b); (3) fraud  
6 (whether heretofore denominated intrinsic or extrinsic),  
7 misrepresentation, or other misconduct of an adverse party; (4) the  
8 judgment is void; (5) the judgment has been satisfied, released, or  
9 discharged, or a prior judgment upon which it is based has been reversed  
10 or otherwise vacated, or it is no longer equitable that the judgment should  
11 have prospective application; or (6) any other reason justifying relief  
12 from the operation of the judgment.

13 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*  
14 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party  
15 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior  
16 decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986),  
17 *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9<sup>th</sup> Cir. 1987). Rule 59(e) of the Federal  
18 Rules of Civil Procedure provides that any "motion to alter or amend a judgment shall be filed no later  
19 than 28 days after entry of the judgment." Furthermore, a motion under Fed. R. Civ. P. 59(e) "should  
20 not be granted, absent highly unusual circumstances, unless the district court is presented with newly  
21 discovered evidence, committed clear error, or if there is an intervening change in the controlling law."  
22 *Herbst v. Cook*, 260 F.3d 1039, 1044 (9<sup>th</sup> Cir. 2001), *quoting McDowell v. Calderon*, 197 F.3d 1253,  
23 1255 (9<sup>th</sup> Cir. 1999).

24 In the order of July 26, 2011, the court denied the petitions, which were factually  
25 frivolous, for failure to state claims for which relief may be granted (ECF #3). First, petitioner's motion,  
26 filed about six months after judgment was entered and this case was closed, is untimely. Second,  
petitioner has failed to make an adequate showing under either Rule 60(b) or 59(e) that this court's order  
denying the petitions should be reversed.

1                   **IT IS THEREFORE ORDERED** that petitioner's motion for district judge to reconsider  
2 order (ECF #9) is **DENIED**.

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6                   DATED this 21<sup>st</sup> day of March 2012.

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8                   UNITED STATES DISTRICT JUDGE  
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